

Disciplinary and Other NASD Actions

REPORTED FOR NOVEMBER

NASD® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of October 2005.

Firm Expelled, Individual Sanctioned

Park Capital Securities, LLC (CRD #104206, New York, New York), Anthony John Orlando, Jr. (CRD #2497838, Registered Principal, New York, New York) and Philip Anthony Orlando (CRD #2839212, Registered Principal, New York, New York) submitted Offers of Settlement in which the firm was expelled from NASD membership. Philip Orlando and Anthony Orlando were each barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they engaged in a fraudulent scheme to profit from the sale of \$3.5 million in securities of a company to public customers through manipulation and the use of high-pressure sales practices, baseless price projections, unauthorized trades and misrepresentations, and omissions of material facts. The findings also stated that the respondents participated in an unregistered distribution of securities by selling shares of the securities without a valid registration statement in effect and without an exemption. (NASD Case #CMS040165)

Firms Fined, Individuals Sanctioned

Alpine Securities Corporation (CRD #14952, Salt Lake City, Utah) and Virgil Mark Peterson (CRD #1094640, Registered Principal, Alpine, Utah) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$22,500, and required to revise its written supervisory procedures to achieve compliance with the applicable securities laws and regulations, and NASD rules concerning books and records, anti-money laundering (AML) and discretionary trading authority. Peterson was fined \$25,000, suspended from association with any NASD member in any capacity for 30 business days and suspended from association with any NASD member in any principal or supervisory capacity for 60 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they failed to properly identify and verify public customers, pursuant to the firm's written AML procedures. The findings stated that the firm and Peterson executed orders placed by a purported representative of the customers, without receiving prior written authorization from the customers, and inaccurately marked order tickets of a stock as "unsolicited" instead of "solicited." The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and NASD rules concerning books and records, AML and

discretionary trading authority. NASD found that the firm's supervisory system failed to include written supervisory procedures providing for identification of the person(s) responsible for supervision with respect to applicable rules, a statement of the supervisory step(s) to be taken by the identified person(s), a statement as to how such person(s) should take such step(s), and a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented. NASD further found that the firm failed to provide for adequate and reasonable supervision of Peterson. In addition, the findings stated that the respondents failed to enforce the firm's written supervisory procedures relating to making and keeping current books and records, exercising discretionary power in customers' accounts without the customers providing prior written authorization to a stated individual, and complying with AML laws.

Peterson's suspensions began September 19, 2005. His suspension in any capacity concluded on October 28, 2005, and his suspension in any principal or supervisory capacity will conclude December 12, 2005. (NASD Case #20050001590-01)

Capital Securities of America, Inc. (CRD #36405, Hartville, Ohio) and Brian Eugene Mohney (CRD #2890043, Registered Principal, Wadsworth, Ohio) submitted an Offer of Settlement in which the firm and Mohney were censured and fined \$10,000, jointly and severally. The firm was fined an additional \$15,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm failed to establish, maintain and enforce adequate written supervisory procedures designed to achieve compliance with applicable securities laws and regulations, and applicable NASD rules regarding the AML compliance program. The findings stated that the firm, acting through Mohney, failed to reasonably supervise an employee by failing to take adequate steps to prevent the employee from engaging in unsuitable trading in the account of a public customer. (NASD Case #C8A050048)

Davrey Financial Services, Inc. (CRD #38914, Tacoma, Washington) and Pravin Roy Davrey (CRD #2243197, Registered Principal, Tacoma, Washington) were censured, fined \$35,000 and required to submit all of the firm's proposed advertising to NASD's Advertising Regulation Department for "pre-use" approval for a period of two years. Pravin Davrey is suspended from association with any NASD member in any capacity and ordered to requalify by examination as a financial and operations principal (FINOP) before again serving in such capacity. The Securities and Exchange Commission (SEC) sustained the sanctions following Davrey and the firm's appeal of a National Adjudicatory Council (NAC) decision. The sanctions were based on findings that the firm, acting through Davrey, failed to maintain accurate books and records, in that the firm made payments out of its operating account to certain shareholders pursuant to the terms of two stock

redemption agreements, but did not record the corresponding liability on the firm's books and records. In addition, NASD found that Davrey allowed the firm to engage in a securities business when the firm did not meet its minimum net capital requirement. NASD also found that the firm, acting through Davrey, made exaggerated, unwarranted and misleading statements, and that Davrey failed to provide specific warnings and disclosures required in advertisements regarding options. In addition, NASD determined that Davrey failed to submit every advertisement pertaining to options to NASD's Advertising Regulation Department at least 10 days prior to use, and failed to include certain required information about how an investor can obtain an options disclosure document in the advertisement.

This action has been appealed to the United States Court of Appeals for the Ninth Circuit and all sanctions are not in effect pending consideration of the appeal. (NASD Case #C3B020015)

Firms and Individuals Fined

Kuhns Brothers Securities Corporation (CRD #47331, Lime Rock, Connecticut) and John Douglas Kuhns (CRD #851444, Registered Principal, Lime Rock, Connecticut) submitted a Letter of Acceptance, Waiver and Consent in which the firm and Kuhns were censured and fined \$15,000 jointly and severally. Without admitting or denying the allegations, the firm and Kuhns consented to the described sanctions and to the entry of findings that the firm, acting through Kuhns, violated the membership rules by initiating a 50 percent transfer of its ownership to another person without giving prior notice, and without NASD approval. The findings also stated that the firm, acting through Kuhns, failed to comply with their claimed exemption under Section 15(c) of the Exchange Act in that during various periods of time, the firm acted as the placement agent for a private offering and held customer funds in a firm bank account. NASD found that the firm, acting through Kuhns, used the instrumentalities of interstate commerce to conduct a securities business while failing to maintain its minimum required net capital. NASD also found that the firm, acting through Kuhns, failed to make, maintain and preserve required customer information records and/or subscription agreement documents for offering investors. (NASD Case #E112004010401)

Northwestern Mutual Investment Services, LLC (CRD #2881, Milwaukee, Wisconsin) and Diane Barbara Horn (CRD #1974921, Registered Principal, Milwaukee, Wisconsin) were each censured and fined. Horn was fined \$15,000, and the firm was fined \$110,000. The sanctions were based on the findings that the respondents violated Rule 3070 by failing to timely report customer complaints to NASD

as statistical and summary information. The findings also stated that the firm failed to properly train its registered representatives and other personnel with respect to the handling of customer complaints, and that the firm failed to adequately maintain and enforce supervisory procedures. The findings further stated that the firm failed to timely report customer settlements, and failed to timely amend a former registered representative's Uniform Termination Notice for Securities Industry Registration (Form U5). (NASD Case #C8A030071)

Firms Fined

ABN Amro Incorporated (CRD #15776, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to submit Reportable Order Events (ROEs) to NASD's Order Audit Trail SystemSM (OATSSM). NASD also found that the firm failed to enforce its written supervisory procedures, which provided for a daily review of the OATS Web site to ensure the timely, accurate and complete submission of OATS information to NASD. The findings further stated that the firm transmitted reports that contained inaccurate, incomplete or improperly formatted data to OATS. In addition, the findings stated that the firm failed to enforce its written supervisory procedures, which specified that the middle office manager would log any issues in a case log and contact NASD to obtain an OATS case number. (NASD Case #20042000195-01)

Avalon Research Group, Inc. (CRD #39815, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it issued research reports that failed to adequately disclose the valuation method used to determine price targets, and failed to adequately disclose the risks that may have impeded achievement of the price targets. NASD also found that the firm issued research reports that did not contain disclosures on the front page of each report, and did not prominently display the reference to the pages on which the disclosures were located, and thus failed to present the required disclosures in a clear, comprehensive and prominent manner. (NASD Case #E072004009801)

Baird, Patrick & Co., Inc. (CRD #1149, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it

failed, within 90 seconds after execution, to transmit through the Automated Confirmation Transaction ServiceSM (ACTSM) last sale reports of transactions in Over-the-Counter (OTC) equity securities, and failed to designate last sale reports as late through ACT. (NASD Case #20042000141-01)

Bosc, Inc. (CRD #17530, Tulsa, Oklahoma) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$15,000 and required to revise its written supervisory procedures with respect to Trade Reporting and Compliance Engine (TRACE) trade reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in TRACE-eligible securities to TRACE within 75 minutes after execution. The findings also stated that the firm's supervisory system did not provide supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and NASD rules concerning TRACE trade reporting. (NASD Case #2004200015601)

Cantone Research, Inc. (CRD #26314, Tinton Falls, New Jersey) submitted a letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it issued research reports that failed to disclose a distribution of ratings current as of the end of the most recent calendar quarter. NASD found that that the firm issued research reports that failed to contain a statement by the research analyst certifying that the views expressed in the research report accurately reflect such research analyst's personal views about the subject securities and issuers. The findings stated that the firm was late reporting municipal transactions and that municipal transactions executed by the firm were reported without a yield. NASD also found that the firm failed to adopt and implement written supervisory procedures reasonably designed to ensure compliance with the provisions of MSRB Rule G-14. (NASD Case #E9B2004002202)

Capital Analysts, Incorporated (CRD #5478, Radnor, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report municipal securities transactions and erroneously reported municipal securities transactions. The findings also stated that the firm failed to accurately report transactions in TRACE-eligible securities and erroneously reported other transactions to TRACE. The findings further stated that the firm failed to establish, maintain and enforce written supervisory procedures that were reasonably designed to achieve compliance with its trade reporting obligations. (NASD Case #E9A2004003301)

C.E. Unterberg, Towbin, LLC (CRD #24790, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$83,000, ordered to pay \$9, plus interest, in restitution to public customers, and required to retain an outside consultant to make recommendations regarding the firm's supervisory system that the firm would then adopt. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to correctly submit either clearing or non-clearing trade reports in "riskless" transactions. NASD found that the firm failed to report last sale transactions in NASDAQ National Market (NNM) securities through ACT. The findings stated that the firm failed to report to ACT the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt or cross for transactions in eligible securities.

The findings also stated that the firm, acting as principal for its own account, failed to provide written notification disclosing to its customer that it was a market maker in the security. NASD found that the firm failed to provide written notification to its customers that transactions were executed at an average price, and neglected to report the firm's correct capacity in transactions. NASD found that the firm made a report available on covered orders in national market system securities that it received for execution that included incorrect and incomplete information as to the classification of orders as "covered" or "not covered." The findings also stated that the firm made available a report on its routing of non-directed orders in covered securities that contained incorrect information about the identity of the venues to which the largest number of total non-directed orders was routed for execution, and the percentage of total non-directed orders routed to those respective venues.

In addition, the findings stated that the firm failed to provide annual written notice to its customers informing them that the routing destination of customer orders is available upon request. NASD determined that the firm failed to make and preserve in an accessible place copies of confirmations of purchases and sales of securities, copies of account statements sent to customers, and memoranda of brokerage orders. Furthermore, NASD found that the firm failed to show, or correctly show, the order receipt time, the order execution time, and/or the time of order cancellation on the memorandum of brokerage orders. Moreover, the findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and NASD rules concerning the registrations of persons with NASD, the SEC Limit Order Display Rule, the Limit Order Protection Interpretation, SEC rules 11AC1-5 and 11AC1-6, the duty of best execution, competing markets and market centers trading securities, anti-competitive behavior, NASD's

Three Quote Rule, NASD rule IM-2110-5, NASD's affirmative determination rule, NASD's Bid Test Rule, the prohibition concerning locked and/or crossed markets, the SEC's and NASD's firm quote rules, the rules applicable to OATS, "Chinese Walls," disclosure of order execution and routing information, trade reporting, and recordkeeping rules. The findings stated that the firm failed to execute market orders fully and promptly so that the resultant price to its customers was as favorable as possible under prevailing market conditions. The findings also stated that the firm executed short-sale transactions and failed to report these transactions to ACT with a short sale-modifier. NASD also found that the firm transmitted reports that contained inaccurate, incomplete or improperly formatted data to OATS. **(NASD Case #20042000039-01)**

Correspondent Services Corporation (CRD #25927, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to timely report ROEs to OATS. The findings further stated that the firm did not correct or replace OATS reports with respect to equity securities traded on The Nasdaq Stock Market, Inc. that were submitted by the firm but rejected by OATS (for not being in the electronic form prescribed by NASD) and were repairable. NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and NASD rules. **(NASD Case #2005000019101)**

Deutsche Bank Securities Inc. (CRD #2525, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it effected securities for the firm's proprietary accounts and failed to make an affirmative determination that the firm could borrow the securities or otherwise provide for their delivery by the settlement date. The findings stated that a third party, reporting on the firm's behalf pursuant to an Attachment II agreement, failed to report the correct symbol, indicating whether the firm executed transactions in eligible securities in a principal or agency capacity, to the NASDAQ Market Center. The findings also stated that the firm failed to provide its customers with written notification disclosing its correct capacity in transactions and that transactions were executed at an average price. **(NASD Case #200500002625-01)**

Deutsche Bank Securities Inc. (CRD #2525, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm

consented to the described sanctions and to the entry of findings that the firm failed to report to TRACE transactions in TRACE-eligible securities executed on a business day during TRACE system hours within 30 minutes of execution time. The findings stated that the firm failed to enforce its written supervisory procedures, which specified that the desk supervisors or a designee would review all corporate bond transaction reports to ensure that they were reported within 30 minutes of execution time. The findings also stated that the firm failed to enforce its procedures requiring that the supervisors or a designee log such reviews as evidence by sending an email recording the completion of the review and noting any problems, including late reports. **(NASD Case #20050004547-01)**

Essex Radez LLC (CRD #34649, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$19,000, and required to revise its written supervisory procedures with respect to complying with applicable securities laws and regulations, and NASD rules concerning ACT reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit last sale reports of transactions in Consolidated Quotation System (CQS) securities through ACT. The findings stated that the firm failed to accept or decline ACT transactions in eligible securities within 20 minutes after execution. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and NASD rules concerning ACT reporting. **(NASD Case #2004200027101)**

First Winston Securities, Inc. (CRD #21538, Winston-Salem, North Carolina) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, by not reporting transactions to TRACE, it failed to participate in the TRACE trade reporting. The findings also stated that the firm failed to establish and maintain a supervisory system and written supervisory procedures that were reasonably designed to achieve compliance with the applicable securities laws and regulations, and NASD rules with respect to reporting corporate bond transactions to the TRACE trade reporting system. **(NASD Case #E072004010901)**

Freedom Investments, Inc. (CRD #37674, Edison, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$17,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to timely report ROEs to OATS. The findings also stated

that the firm did not correct or replace OATS reports with respect to equity securities traded on NASDAQ that were submitted by the firm but rejected by OATS for not being in the electronic form prescribed by NASD. NASD found that the firm failed to enforce its written supervisory procedures, which specified that rejected ROEs would be repaired and resubmitted to OATS. **(NASD Case #2005000226-01)**

Jefferies & Company, Inc. (CRD #2347, Los Angeles, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$12,500 and required to revise its written supervisory procedures with respect to publishing quotations in non-NASDAQ securities. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it published quotations for OTC equity securities, or, directly or indirectly, submitted such quotations for publication, in a quotation medium, the pink sheets, and did not have the documentation required by SEC Rule 15c2-11(a) in its records. The findings also stated that the firm failed to file the required form with NASD at least three business days before its quotations were published or displayed in a quotation medium. NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and NASD rules concerning publishing quotations in non-NASDAQ securities. **(NASD Case #2004200018701)**

Jefferies & Company, Inc. (CRD #2347, Los Angeles, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$125,000, and required to revise its written supervisory procedures with respect to applicable securities laws and regulations, and NASD rules concerning frontrunning and trade reporting—riskless principal capacity, SEC Rules 11Ac1-5 and 11Ac1-6, customer crosses, the Three Quote Rule, trade reporting—long/short, the Bid Test Rule and the One Percent Rule. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to immediately display customer limit orders in NASDAQ securities in its public quotation, when each such order was at a price that would have improved the firm's bid or offer in each such security; or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each such security, and the size of the order represented more than a de minimis change in relation to the size associated with firm's bid or offer in each such security. NASD also found that the firm failed to preserve the memorandum of brokerage orders. The findings also stated that the firm failed to accept or decline in ACT transactions in eligible securities within 20 minutes after execution, incorrectly designated as ".PRP" through ACT last-sale reports of transactions, and incorrectly reported and/or media reported

riskless principal transactions in NNM and OTC Equity securities. NASD found that the firm failed to report to ACT the correct symbol indicating whether the firm executed transactions in eligible securities in a principal, riskless principal or agency capacity; the correct unit price for transactions in eligible securities; and whether certain transactions in eligible securities were a buy, sell, sell short, sell short exempt or cross.

In addition, the findings stated that the firm failed to notify its customers in writing of its correct capacity in certain transactions, and that certain transactions were executed at an average price. NASD also found that the firm acted as principal for its own account in certain transactions and failed to notify its customers in writing of the correct reported trade price. Moreover, NASD found that the firm failed, within 90 seconds after execution, to transmit last-sale reports of transactions in OTC equity securities through ACT and failed, within 90 seconds after execution, to transmit certain other last sale reports of transactions in OTC equity securities through ACT and to designate such last-sale reports as late. In addition, the findings stated that the firm executed short-sale orders in certain securities and failed to make an affirmative determination prior to executing such transactions. NASD determined that the firm incorrectly designated last-sale reports of transactions in OTC equity securities as “.SLD” through ACT within 90 seconds of execution.

The findings also stated that the firm failed to submit a cancel report, an execution report, and a new order report to OATS after receiving a modification to the terms of an order. NASD found that the firm failed to record proprietary short sales as short on its trading ledger, and failed to show the correct time of execution on the memorandum of brokerage orders. The findings also determined that the firm made a report in national market system securities available that contained incorrect information as to the number of covered orders and the total number of shares. NASD also found that the firm's supervisory system did not provide supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and NASD rules concerning frontrunning and trade reporting—riskless principal capacity, SEC Rules 11Ac1-5 and 11Ac1-6, customer crosses, the Three Quote Rule, trade reporting—long/short, the Bid Test Rule and the One Percent Rule. (NASD Case #20042000017-02)

KNBT Securities, Inc. (CRD #115372, Bethlehem, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$40,000 and required to revise its written supervisory procedures with respect to the applicable securities laws and regulations, and NASD rules concerning trade reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it leased its ACT WebLink access to a third party that was not registered with

NASD. The findings also stated that the third party reported transactions to ACT on behalf of a firm as internal cross trades, with the firm incorrectly identified as both the executing firm and the contra firm in all of the transactions. The findings further stated that the firm's supervisory system was not reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and NASD rules concerning trade reporting. The findings also stated that the firm failed, within 90 seconds after execution, to transmit last-sale reports of transactions through ACT and incorrectly designated last sale reports of transactions in NASDAQ securities as “.SLD” through ACT. (NASD Case #2005000076201)

Maloney Securities Co., Inc. (CRD #38535, Manchester, Missouri) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$21,000 and required to revise its written supervisory procedures with respect to applicable securities laws and regulations, and NASD rules concerning TRACE. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report the correct execution time of transactions of TRACE-eligible securities to TRACE. The findings also stated that the firm failed to report transactions of TRACE-eligible securities executed on a business day to TRACE during TRACE system hours within 45 minutes of execution time. NASD further found that the firm's supervisory system did not provide supervision reasonably designed to achieve compliance with applicable securities laws and regulations, and NASD rules concerning TRACE. (NASD Case #2005000188101)

Merrill Lynch Professional Clearing Corp. (CRD #16139, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$23,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to timely report ROEs to OATS. The findings also stated that the firm did not correct or replace OATS reports with respect to equity securities traded on NASDAQ that the firm submitted, but were rejected by OATS for not being in the electronic form prescribed by NASD. NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and NASD rules concerning compliance with OATS rules. (NASD Case #20042000057-01)

Meyers Associates, L.P. (CRD #34171, New York, New York) submitted an Offer of Settlement in which the firm was censured, fined \$25,000 and required to revise its written supervisory procedures to notify all counsel representing the firm in arbitration proceedings of the firm's policy to comply with discovery requirements as set out in the Code of

Arbitration, and to comply with all orders of arbitration panels relating to discovery obligations. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to comply with its discovery obligations by failing to produce, in a timely manner, documents in its possession or control that were requested by the claimant. The findings also stated that the firm failed to comply with orders issued by an arbitration panel requiring the firm to produce documents in its possession or control, or to submit an affidavit from its CEO providing specific information related to the production of documents. (NASD Case # CE2050003)

optionsXpress, Inc. (CRD #103849, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$14,000, and required to revise its written supervisory procedures regarding compliance with applicable securities laws and regulations, and NASD rules concerning repair of rejected ROEs and OATS business clock synchronization. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it did not correct or replace OATS reports with respect to equity securities traded on NASDAQ that the firm submitted, but were rejected by OATS for not being in the electronic form prescribed by NASD. The findings also stated that the firm misreported execution reports to OATS and submitted reports to OATS where the time stamps on the new order report were more than three seconds later than the respective time stamps on the related subsequent reports. NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and NASD rules concerning the repair of rejected ROEs and OATS business clock synchronization. (NASD Case #2004200013201)

Penson Financial Services, Inc. (CRD #25866, Dallas, Texas) submitted an Offer of Settlement in which the firm was censured and fined \$50,000, of which \$7,500 is jointly and severally with an employee. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it, acting through an employee, failed to maintain an adequately funded reserve account. The findings also stated that the firm violated Rule 3011(b) in that the firm failed to timely file annual reports of foreign bank and financial accounts with the U.S. Department of the Treasury for each of its foreign accounts. (NASD Case #C0620050007/E062002007507)

Pershing Trading Company, L.P. N/K/A Pershing Advisor Solutions LLC (CRD #36671, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$15,000 and required to review the systems used by the firm to comply with the limit

order display rule. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to immediately display customer limit orders in NASDAQ securities in its public quotation when each such order was at a price that would have improved the firm's bid or offer in each such security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each security, and the size of the order represented more than a de minimis change in relation to the size associated with the firm's bid or offer in each such security. (NASD Case #20050000972-01)

RDSC, LLC (CRD #7519, Cincinnati, Ohio) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to prepare and maintain an adequate written AML compliance program. (NASD Case #E8A2004024001)

Ryan Beck & Co. (CRD# 3248, Florham Park, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$15,000 and ordered to pay \$528.22, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions. NASD also found that the firm transmitted reports that contained inaccurate, incomplete or improperly formatted data to OATS. (NASD Case #2004200012101)

Sanders Morris Harris Inc. (CRD #20580, Houston, Texas) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$10,000 and required to revise its written supervisory procedures regarding compliance with applicable securities laws and regulations, and NASD rules concerning the Display Rule. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to immediately display customer limit orders in NASDAQ securities in its public quotation, when each such order was at a price that would have improved the firm's bid or offer in each security or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each security, and the size of the order represented more than a de minimis change in relation to the size associated with the firm's bid or offer in each security. NASD also found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and NASD rules concerning the Display Rule. (NASD Case #20042000096-01)

Securian Financial Services, Inc. (CRD #15296, St. Paul, Minnesota) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$165,127. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it accepted approximately \$550,423 in directed brokerage commissions from mutual fund families as partial payment for participation in the firm's Strategic Partnership Program. The findings further stated that these strategic partners received a number of benefits in return for these payments, including preferential marketing and distribution access. **(NASD Case #E0420040104-01)**

Springboard Securities, Inc. (CRD #104458, Newport Beach, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted its parent company's president to act in the capacity of a general securities principal without the benefit of registration as a principal. While not registered as a principal, the parent company's president actively engaged in the general management of the firm and supervision of persons associated with the firm. **(NASD Case #E0220040276-01)**

Suntrust Investment Services, Inc. (CRD #17499, Atlanta, Georgia) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$15,000 and required to revise its written supervisory procedures regarding compliance with applicable securities laws and regulations, and NASD rules concerning TRACE reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in TRACE-eligible securities executed on a business day to TRACE during TRACE system hours within 45 minutes of execution time. The findings further stated that the firm failed to report transactions in TRACE-eligible securities executed on a business day prior to TRACE system hours to TRACE within 45 minutes after the TRACE system opened the same business day. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and NASD rules concerning TRACE reporting. **(NASD Case #20042000229-01)**

Symetra Investment Services, Inc. (CRD #19061, Bellevue, Washington) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report the correct time of trade execution for certain transactions to TRACE. The findings further stated that the firm failed to report transactions in

TRACE-eligible securities executed on a business day prior to TRACE system hours to TRACE within 45 minutes after the system opened the same business day. **(NASD Case #20042000227-01)**

Timber Hill LLC (CRD #33319, Greenwich, Connecticut) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$35,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it submitted incorrect short interest position reports to NASD. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and NASD rules concerning short interest reporting. **(NASD Case #20042000011-01)**

Trinix Securities LLC (CRD #103360, Encinitas, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it transmitted reports that contained inaccurate, incomplete or improperly formatted data to OATS. **(NASD Case #20050000207-01)**

The (Wilson) Williams Financial Group (CRD #22704, Dallas, Texas) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$10,000 and required to revise its written supervisory procedures regarding the applicable securities laws and regulations, and NASD rules concerning TRACE reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report the correct time of trade execution for transactions in TRACE-eligible securities to TRACE. The findings also stated that the firm failed to report transactions in TRACE-eligible securities executed on a business day during TRACE system hours to TRACE within 45 minutes of execution time. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance regarding applicable securities laws and regulations, and NASD rules concerning TRACE reporting. **(NASD Case #20050001884-01)**

Individuals Barred or Suspended

Steven Michael Acosta (CRD #2598083, Registered Representative, Pasadena, California) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Acosta consented to the described

sanction and to the entry of findings that he failed to amend his Uniform Application for Securities Industry Registration and Transfer (Form U4) to disclose a material fact.

Acosta's suspension began November 7, 2005, and will conclude at close of business February 6, 2006. (NASD Case #E0220040693-01)

Jerry Don Bailey (CRD #1756858, Registered Representative, Flower Mound, Texas) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bailey consented to the described sanction and to the entry of findings that he made unsuitable variable annuity and/or variable universal life insurance recommendations to public customers. The findings stated that Bailey failed to obtain financial information from any of the customers before making investment recommendations, and had several customers sign a disclosure and alter blank documents. The findings also stated that he made misrepresentations and omitted material facts in connection with his unsuitable investment recommendations. (NASD Case #E062003037501)

Robert Glenn Bard (CRD #2447501, Registered Principal, Warfordsburg, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bard consented to the described sanction and to the entry of findings that he signed public customers' names on client agreements/new account forms, discretionary power forms, variable annuity purchase applications and related documents, and third-party management agreements without the authority to sign the names. NASD found that Bard also obtained signature guarantees for some of the signatures, notwithstanding that some of the signatures were fake. The findings also stated that Bard effected transactions in customers' accounts based on oral or written discretionary power the customers had granted him but failed to obtain his member firm's acceptance of the discretionary power. The findings further stated that Bard effected a purchase of a variable annuity on behalf of a customer and guaranteed a minimum investment return, both orally and in writing. (CRD #E9A2004043301)

Arthur Joseph Booze (CRD #2570386, Registered Representative, Chicago, Illinois) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Booze consented to the described sanctions and to the entry of findings that he altered a mutual fund product switch form and failed to provide a copy of the switch letter with the true and accurate sales charge to the public customer. The findings stated that Booze recommended securities transactions in the

accounts of customers without having a reasonable basis for believing that the transactions were suitable for the customers based on the customers' financial statuses, investment objectives and without discussing the possibility of purchasing similar mutual funds within the existing fund family.

Booze's suspension began October 17, 2005, and will conclude October 16, 2006. (NASD Case #C8A050029/E8A2003032203)

Dante Falco Calicchio (CRD #2812117, Registered Representative, Boca Raton, Florida), Charles Philippe Celestin (CRD #4276880, Registered Principal, Coral Springs, Florida) and Marc Steven Kimmel (CRD #2805550, Registered Representative, Los Angeles, California) were barred from association with any NASD member in any capacity. The sanctions were based on findings that the respondents, by the use of means or instrumentalities of interstate commerce or of the mails, intentionally and recklessly affected transactions, and induced the purchase and the sale of securities by means of deceptive, manipulative and other fraudulent devices or contrivances. The findings also stated that Calicchio and Kimmel failed to timely amend their Forms U4 to disclose a material fact. (NASD Case #CMS040094)

Anthony Scott Campbell (CRD #2859670, Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Campbell consented to the described sanction and to the entry of findings that he received \$6,000 from a public customer to be invested in two separate accounts, deposited the funds into his personal checking account and converted \$3,000 of the funds for his own use and benefit. The findings also stated that Campbell failed to respond to NASD requests for information. (NASD Case #2005000085901)

Alan Steven Cohen (CRD #2237526, Registered Principal, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cohen consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. (NASD Case #ELI2004039601)

Frank DiBenedetto (CRD #2264232, Registered Representative, Staten Island, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, DiBenedetto consented to the described sanction and to the entry of findings that he knowingly prepared and submitted a

falsified life insurance application to his member firm, knowing that the signature of the purported insured was forged. (NASD Case #E1020032079-01)

Myron S. Frierson (CRD #4130928, Registered Representative, Teaneck, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Frierson consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. (NASD Case #2005001318601)

Francisco Galvan (CRD #1164780, Registered Principal, Stockton, California) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Galvan consented to the described sanction and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm. The findings also stated that Galvan recommended securities transactions to a public customer without having a reasonable basis for believing the recommendations were suitable for the customer based on the customer's financial situation and needs. The findings further stated that Galvan failed to respond to NASD requests for documents and information. (NASD Case #C01040017)

Joseph Eugene Hamlet (CRD #1679675, Registered Representative, Long Beach, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Hamlet consented to the described sanctions and to the entry of findings that he settled verbal customer complaints without informing or obtaining authorization from his member firm.

Hamlet's suspension began November 7, 2005, and will conclude at the close of business February 6, 2006. (NASD Case #2005000738701)

James Brendan Hanley (CRD #1438024, Registered Representative, Malden, Massachusetts) was fined \$42,500, suspended from association with any NASD member in any capacity for 17 months and ordered to pay \$7,364.48, plus interest. Without admitting or denying the allegations, Hanley consented to the described sanctions and to the entry of findings that, while exercising effective control over public customer accounts, he engaged in excessive trading. The findings stated that Hanley exercised discretion in customer accounts without written authorization from the customers.

Hanley's suspension began September 6, 2005, and will conclude at close of business February 5, 2007. (NASD Case #C11050013)

Richard Thomas Hayden (CRD #2580503, Registered Representative, Miami Lakes, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$20,000 and suspended from association with any NASD member in any capacity for three months. In addition, Hayden was ordered to pay restitution of \$121 plus interest to public customers. Hayden must pay his fine before he reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Hayden consented to the described sanctions and to the entry of findings that he knowingly and intentionally entered priced limit orders to buy or sell a small number of shares of a NASDAQ security into an Electronic Communications Network (ECN) at prices that he knew would improve the National Best Bid or Offer (NBBO) in that security. The findings stated that, after entering orders into the ECN that improved the NBBO, Hayden knowingly and intentionally entered larger orders to sell (buy) shares of the security in his trading account because he knew and intended that these orders would be routed to Small Order Execution System (SOES) market makers that were programmed to buy or sell, and then bought and sold the security on an automated basis at prices equal to the NBBO. The findings also stated that, immediately after he received the SOES executions of the orders, Hayden intentionally and knowingly cancelled the priced limit order that he had entered to improve the NBBO, thereby obtaining a financial benefit. NASD found that he caused to be published or circulated limit orders at prices that affected the NBBO and became quotations for the security, without believing that those quotations represented bona fide bids or offers for the security.

Hayden's suspension began October 17, 2005, and will conclude at the close of business on January 16, 2006. (NASD Case #20042000018-01)

Jace Rodney Hermanson (CRD #4630946, Registered Representative, Scottsdale, Arizona) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$6,582.54 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Hermanson reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Hermanson consented to the described sanctions and to the entry of findings that he engaged in business activity outside the scope of his member firm and failed to provide his member firm with prompt written notice.

Hermanson's suspension began November 7, 2005, and will conclude at close of business February 6, 2006. (NASD Case #E3A2004034801)

Martin Ray Hershner (CRD #2860663, Registered Representative, Lexington, Ohio) was barred from

association with any NASD member in any capacity. The sanction was based on findings that Hershner caused redemption of \$54,906.72 from public customers' mutual funds and committed conversion by cashing these funds for his own use or benefit without the knowledge or consent of the customers. The findings also stated that Hershner failed to respond to an NASD request for documents and information. (NASD Case #C8A050020)

Judah Indig (CRD #722871, Registered Representative, Far Rockaway, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for ten business days. Without admitting or denying the allegations, Indig consented to the described sanctions and to the entry of findings that he placed trades on margin in public customers' joint account without disclosing that they were using margin to make certain purchases to the customers.

Indig's suspension began November 7, 2005, and will conclude at the close of business November 18, 2005. (NASD case #ELI2004018802)

Vatsana Inthalansy (CRD #4009666, Registered Representative, Naples, Florida) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid before Inthalansy reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Inthalansy consented to the described sanctions and to the entry of findings that she reimbursed a public customer for an early mutual fund liquidation fee.

Inthalansy's suspension began October 17, 2005, and concluded at the close of business October 28, 2005. (NASD Case #2005001268601)

Nariman Jalayer (CRD #3270025, Registered Principal, Pt Jefferson, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Jalayer consented to the described sanctions and to the entry of findings that he opened an account at his member firm in the name of a public customer without the customer's prior knowledge. NASD also found that Jalayer effected transactions in customer accounts without the customers' prior knowledge, authorization or consent.

Jalayer's suspension began October 17, 2005, and concluded at the close of business November 4, 2005. (NASD Case #E1020031861-01)

William Edward Jasko (CRD #2103111, Registered Representative, Saddle River, New Jersey) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Jasko consented to the described sanction and to the entry of findings that he recommended and affected excessive securities transactions in the accounts of public customers without having a reasonable basis for believing that the recommendations were suitable for the customers based on their other security holdings, financial situations, investment objectives and needs. (NASD Case #C9B040112/E9B2003017004)

Joseph Lee Karcagi (CRD #264316, Registered Principal, Punta Gorda, Florida) was barred from association with any NASD member in any capacity. The sanctions were based on the findings that Karcagi failed to appear in response to an NASD request for an on-the-record interview. (NASD Case #C07050028)

Mark Augustine Kollar (CRD #2183640, Registered Principal, Northbrook, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Kollar consented to the described sanctions and to the entry of findings that he accepted \$54,449 in compensation from an insurance company unaffiliated with his member firm for the sale of an annuity and an insurance policy to a public customer without providing notice to his member firm.

Kollar's suspension began October 17, 2005, and will conclude at the close of business November 15, 2005. (NASD Case #E072004033901)

Andrew Sean Korotzer (CRD #4259307, Registered Representative, Moorpark, California) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Korotzer consented to the described sanction and to the entry of findings that he submitted applications to his member firm for fictitious transactions in insurance products for which he received commissions without the customers' knowledge, consent or authorization. (NASD Case #E0220040288-01)

Kenneth Krygowski (CRD #4534650, Registered Representative, West Chester, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Krygowski consented to the described sanction and to the entry of findings that he willfully failed to disclose material information on his Form U4. (NASD Case #E9A2004053701)

Thomas Garcia Lara, Jr. (CRD #3213779, Registered Representative, El Paso, Texas) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lara consented to the described sanction and to the entry of findings that he prepared and submitted requests for reimbursement to his member firm for business travel expenses totaling \$26,268 that he did not incur, and accepted the reimbursement payment knowing that he had not incurred the expenses for which he was being reimbursed. **(NASD Case #E3A20040328-03)**

Richard Leaf Levardsen (CRD #4611656, Registered Representative, Patchogue, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six weeks. Without admitting or denying the allegations, Levardsen consented to the described sanctions and to the entry of findings that he took the NASD Series 7 examination, received a failing score of 45 percent, then altered the proctor's report to reflect that he received a failing score of 65 percent. He then presented the altered proctor's report to his firm's managers, thereby misrepresenting that he had received a higher score than the one he actually received.

Levardsen's suspension began November 7, 2005, and will conclude at the close of business December 16, 2005. **(NASD Case #E102004117601)**

Joan Levigne (CRD #3176451, Registered Representative, St. Clair Shores, Michigan) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$7,500 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Levigne reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Levigne consented to the described sanctions and to the entry of findings that she altered a public customer's signed annuity request form without the knowledge or permission of the customer.

Levigne's suspension began October 17, 2005, and will conclude at the close of business April 16, 2006. **(NASD Case #E8A2004107801)**

Irving Bruce Mangurten (CRD #3159260, Registered Representative, Buffalo Grove, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Mangurten reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the

allegations, Mangurten consented to the described sanction and to the entry of findings that he failed to timely amend his form U4 to disclose a material fact.

Mangurten's suspension will begin November 21, 2005, and will conclude on May 20, 2006. **(NASD Case #E8A2004073101)**

George Margossian (CRD #4566805, Associated Person, Woodland Hills, California) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Margossian consented to the described sanction and to the entry of findings that, while acting as treasurer of a business networking organization, he forged the signature of the organization's president on a company check, cashed the check and misappropriated \$700 of the organization's funds. **(NASD Case #20050007348-01)**

Derek Robert McCown (CRD #2449538, Registered Representative, Richmond, Virginia) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, McCown consented to the described sanction and to the entry of findings that he forged, or caused to be forged, a public customer's signature authorizing \$170,000 to be electronically transferred from the customer's account to a bank account he controlled, then used the funds for his own benefit. The findings also stated that McCown failed to respond to NASD requests for information. **(NASD Case #2005001582101)**

Markham Edward Murphy (CRD #4367355, Registered Representative, Plantation, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$20,000 and suspended from association with any NASD member in any capacity for three months. In addition, Murphy was ordered to pay restitution of \$348.48 plus interest to public customers. Murphy must pay his fine before he reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Murphy consented to the described sanctions and to the entry of findings that he knowingly and intentionally entered priced limit orders to buy or sell a small number of shares of a NASDAQ security into an Electronic Communications Network (ECN) at prices that he knew would improve the National Best Bid or Offer (NBBO) in that security. The findings stated that, after entering orders into the ECN that improved the NBBO, Murphy knowingly and intentionally entered larger orders to sell (buy) shares of the security in his trading account because he knew and intended that these orders would be routed to Small Order Execution System (SOES) market makers that were programmed to buy or sell, and then bought and sold, the security on an automated basis at prices equal to the NBBO.

The findings also stated that, immediately after he received the SOES executions of the orders, Murphy intentionally and knowingly cancelled the priced limit order that he had entered to improve the NBBO, thereby obtaining a financial benefit. NASD found that he caused to be published or circulated limit orders at prices that affected the NBBO and became quotations for the security, without believing that those quotations represented bona fide bids or offers for the security.

Murphy's suspension began October 17, 2005, and will conclude at the close of business on January 16, 2006. (NASD Case #2004200018-02)

Douglas Donovan Pfaff (CRD #1315669, Registered Principal, Mt. Horeb, Wisconsin) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pfaff consented to the described sanction and to the entry of findings that he forged the signatures of public customers on life insurance policy loan agreements and policy loan checks without their knowledge or consent. The findings stated that Pfaff was able to obtain \$74,739.08 in loans against the value of the life insurance policies and used those funds for his own use and benefit. NASD found that Pfaff falsified a client summary statement requested by a public customer. (NASD Case #2005000532601)

Derward Kyle Richardson (CRD #4037870, Registered Representative, Grand Prairie, Texas) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Richardson reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Richardson consented to the described sanctions and to the entry of findings that he effected transactions in public customers' accounts through the use of discretionary power without prior written authorization from the customers, and without his member firm's written acceptance of the accounts as discretionary. The findings also stated that Richardson did not have reasonable grounds for believing that his recommendations and the resulting transactions, all of which involved high-risk technology stocks, were suitable for the customers based on their financial situations and needs.

Richardson's suspension began October 17, 2005, and will conclude at the close of business November 28, 2005. (NASD Case #E062004034501)

Stephen Craig Richmond (CRD #3240261, Registered Representative, Wellington, Florida) was barred from association with any NASD member in any capacity. The

sanction was based on findings that Richmond engaged in private securities transactions without providing prior written notice to his member firm. The findings stated that Richmond failed to respond to NASD requests for information. (NASD Case #C05050012)

David Michael Rondeau (CRD #1904325, Registered Representative, Rochester, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Rondeau consented to the described sanction and to the entry of findings that he effected numerous securities transactions in the accounts of public customers without their prior knowledge, authorization or consent. (NASD Case #E9B2004058501)

Scott Howard Ross (CRD #2399201, Registered Representative, Setauket, New York) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ross consented to the described sanctions and to the entry of findings that he, acting on behalf of his firm, effected, or caused to be effected, transactions in the joint account of public customers without their prior knowledge, authorization or consent. The findings also stated that Ross failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #ELI20040220-02)

John B. Schaedel (CRD #2833004, Registered Representative, Kissimmee, Florida) and **Anthony Truman (CRD #2560848, Registered Representative, Orlando, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which Schaedel was fined \$110,000, suspended from association with any NASD member in any capacity for one year, and required to requalify as a general securities representative (Series 7) by exam before reassociation with any NASD member. Truman was suspended from association with any NASD member in any capacity for one year and required to requalify as a general securities representative by exam before reassociation with any NASD member. In light of the financial status of Truman, no monetary sanction has been imposed. Without admitting or denying the allegations, Schaedel and Truman consented to the described sanctions and to the entry of findings that they facilitated their clients' efforts to market time mutual funds in violation of valid restrictions imposed by the mutual funds and in violation of NASD rules. The findings stated that nearly all of their clients market timed mutual funds and their customers opened accounts for common beneficial owners and engaged in deceptive activities to avoid fund restrictions. The findings also stated that although Schaedel and Truman were aware that certain mutual funds discouraged or restricted frequent trading, they immediately began executing market-timing transactions for their customers. NASD found that, as a result of these deceptive practices, the customers executed

roundtrips that violated fund restrictions or limitations, thus earning substantial illicit profits.

Schaedel's suspension began November 7, 2005, and will conclude at the close of business November 6, 2006. Truman's suspension began October 17, 2005, and will conclude at the close of business October 16, 2006. **(NASD Case #EAF0301040002)**

Cheryl Roppa Schwarzwaelder (CRD #1637834, Registered Representative, Sewickley Heights, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Schwarzwaelder consented to the described sanction and to the entry of findings that she caused inaccurate expense reports for client development to be submitted to her member firm. **(NASD Case #E9A2003050201)**

Daniel Adam Sherwood (CRD #2412533, Registered Principal, Weston, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$20,000 and suspended from association with any NASD member in any capacity for three months. In addition, Sherwood was ordered to pay restitution of \$136.50 plus interest to public customers. Sherwood must pay his fine before he reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Sherwood consented to the described sanctions and to the entry of findings that he knowingly and intentionally entered priced limit orders to buy or sell a small number of shares of a NASDAQ security into an Electronic Communications Network (ECN) at prices that he knew would improve the National Best Bid or Offer (NBBO) in that security. The findings stated that, after entering orders into the ECN that improved the NBBO, Sherwood knowingly and intentionally entered larger orders to sell (buy) shares of the security in his trading account because he knew and intended that these orders would be routed to Small Order Execution System (SOES) market makers that were programmed to buy or sell, and then bought and sold, the security on an automated basis at prices equal to the NBBO. The findings also stated that, immediately after he received the SOES executions of the orders, Sherwood intentionally and knowingly cancelled the priced limit order that he had entered to improve the NBBO, thereby obtaining a financial benefit. NASD found that he caused to be published or circulated limit orders at prices that affected the NBBO and became quotations for the security, without believing that those quotations represented bona fide bids or offers for the security.

Sherwood's suspension began October 17, 2005, and will conclude at the close of business on January 16, 2006. **(NASD Case #2004200018-05)**

Michael A. Sherwood (CRD #4141255, Registered Principal, Miami Beach, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$20,000 and suspended from association with any NASD member in any capacity for three months. In addition, Sherwood was ordered to pay restitution of \$136.50 plus interest to public customers. Sherwood must pay his fine before he reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Sherwood consented to the described sanctions and to the entry of findings that he knowingly and intentionally entered priced limit orders to buy or sell a small number of shares of a NASDAQ security into an Electronic Communications Network (ECN) at prices that he knew would improve the National Best Bid or Offer (NBBO) in that security. The findings stated that, after entering orders into the ECN that improved the NBBO, Sherwood knowingly and intentionally entered larger orders to sell (buy) shares of the security in his trading account because he knew and intended that these orders would be routed to Small Order Execution System (SOES) market makers that were programmed to buy or sell, and then bought and sold, the security on an automated basis at prices equal to the NBBO. The findings also stated that, immediately after he received the SOES executions of the orders, Sherwood intentionally and knowingly cancelled the priced limit order that he had entered to improve the NBBO, thereby obtaining a financial benefit. NASD found that he caused to be published or circulated limit orders at prices that affected the NBBO and became quotations for the security, without believing that those quotations represented bona fide bids or offers for the security.

Sherwood's suspension began October 17, 2005, and will conclude at the close of business on January 16, 2006. **(NASD Case #2004200018-03)**

Jerritt Clark Simmers (CRD #4590866, Registered Representative, Farmingville, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Simmers willfully failed to disclose material facts on his Forms U4. **(NASD Case #C10050033)**

Gregory Joseph Smith (CRD #1342428, Registered Representative, Cape Coral, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was suspended from association with any NASD member in any capacity for 90 days. In light of the financial status of Smith, no monetary sanction has been imposed. Without admitting or denying the allegations, Smith consented to the described sanction and to the entry of findings that he willfully failed to disclose a material fact on his Form U4.

Smith's suspension began November 7, 2005, and will conclude February 4, 2006. **(NASD Case #E022002092201)**

Mansell R. Spedding (CRD #1102031, Registered Principal, Cathedral City, California) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 20 business days. Without admitting or denying the allegations, Spedding consented to the described sanctions and to the entry of findings that he recommended variable annuity transactions to public customers without having a reasonable basis for believing that the recommendations were suitable for the customers based on their objectives, financial situations and needs.

Spedding's suspension began November 7, 2005, and will conclude at close of business December 5, 2005. **(NASD Case #E0220030907-01)**

Ryan Christopher Stewart (CRD #3195756, Registered Representative, Chesapeake, Virginia) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Stewart consented to the described sanction and to the entry of findings that he sought and accepted a \$5,000 loan from a public customer without obtaining prior written approval from his member firm to borrow the funds. NASD found that Stewart failed to respond to NASD requests for information. **(NASD Case #2005001807801)**

Robert Trevlin Stewart, Jr. (CRD #1611243, Registered Principal, Richmond, Virginia) was barred from association with any NASD member in any capacity. The sanction was based on findings that Stewart received a \$165,000 check from a public customer for investment purposes that he deposited into a bank account he controlled, then withdrew \$28,838.14, thereby using the funds for his own use and benefit without the customer's knowledge, authorization or consent. The findings also stated that Stewart failed to respond to an NASD request for information. **(NASD Case #C3B050006)**

James Arthur Swanke (CRD #2228901, Registered Representative, Apple Valley, Minnesota) submitted an Offer of Settlement in which he was fined \$15,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Swanke reassociates with any NASD member following the suspension or requests relief from any statutory disqualification. Without admitting or denying the allegations, Swanke consented to the described sanctions and to the entry of findings that he made material misstatements of facts in connection with his offer and sales of callable certificates of deposit.

Swanke's suspension will begin November 21, 2005, and will conclude on May 20, 2006. **(NASD Case #E052000056306 (formerly C0620050026))**

John Richard Tamburrino (CRD #1896150, Registered Principal, Manalapan, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Tamburrino consented to the described sanction and to the entry of findings that he failed to appear for an NASD on-the-record interview. **(NASD Case #20050000284-01)**

Daniel Duane Volnek (CRD #2444536, Registered Representative, Lincoln, Nebraska) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Volnek consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. **(NASD Case #E0420040397-01)**

Mitchell Aaron Weisberg (CRD #1882341, Registered Representative, Deerfield Beach, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Weisberg effected, or caused to be effected, securities transactions in the accounts of a public customer without the customer's prior knowledge or authorization. The findings also stated that Weisberg failed to respond to NASD requests for information. **(NASD Case #C07050020)**

Charles Lee Williams (CRD #4767254, Registered Representative, Colorado Springs, Colorado) was barred from association with any NASD member in any capacity. The sanction was based on findings that Williams included false and misleading information on his Form U4 to avoid disclosure of material facts. The findings also stated that Williams failed to respond to NASD requests for information. **(NASD Case #C3A050011)**

Individuals Fined

Susanne Smith Pruitt (CRD #1347974, Registered Principal, Seattle, Washington) submitted a Letter of Acceptance, Waiver and Consent in which she was censured and fined \$20,000, of which \$5,000 is jointly and severally with her member firm. The fine must be paid before Pruitt reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Pruitt consented to the described sanctions and to the entry of findings that she failed to preserve memoranda brokerage orders and any other instruction given or received for the purchase or sale of securities, whether executed or unexecuted. The findings also stated that Pruitt, acting on behalf of her member firm, failed to preserve any of the firm's internal or external email communications, and failed to print and review the firm's

email as required by the firm's written supervisory procedures. The findings also stated that Pruitt, acting on behalf of her member firm, failed to implement her firm's written supervisory procedures for review of email correspondence. (NASD Case #E3B2003029701)

Decisions Issued

The following decisions have been issued by the Office of Hearing Officers (OHO) and have been appealed to or called for review by the NAC as of September 30, 2005. The findings and sanctions imposed in the decisions may be increased, decreased, modified or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notice to Members*.

Jimmie Lee Griffith (CRD #2321620, Registered Representative, Richmond, California) was fined \$10,000 and suspended from association with any NASD member in any capacity for three months. The sanctions were based on findings that Griffith effected securities transactions in the accounts of public customers without their authorization.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C01040025)

Malvinder Sonny Matharu (CRD #2650655, Registered Representative, Redondo Beach, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Matharu refused to provide testimony to NASD.

This decision has been appealed to the NAC, and the sanction is not in effect pending consideration of the appeal. (NASD Case #C02050006)

John M. Meyers (CRD #2580153, Registered Principal, Coram, New York) and Brian Craig Klein (CRD #2723977, Registered Representative, Farmingdale, New York) Meyers was fined \$45,000, suspended from association with any NASD member in any capacity for 18 months and required to requalify in all capacities by exam. Klein was fined \$40,000, suspended from association with any NASD member in any capacity for one year and required to requalify in all capacities by exam. The sanctions were based on findings that Meyers and Craig failed to disclose that their compensation for selling shares of a particular stock they recommended would, or might, include sales credits over and above their disclosed compensation. The findings stated that the respondents' failure to disclose the sales credits to customers was material and reckless. The sanction also were based on findings that, in connection with the respondents'

recommendations to customers, they made material and misleading predictions about the future price of a stock in order to induce customers to purchase it.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C3A040023)

Complaints Filed

NASD issued the following complaints. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

Patrick Alexander Anthony (CRD #2080102, Registered Principal, Los Angeles, California) was named as a respondent in an NASD complaint alleging that he used his member firm to defraud public customers. The complaint alleges that he raised \$80,000 from the customers whom he solicited to invest in a purportedly new company, and told the investors that they would receive monthly interest distributions at a 12 percent annualized return, and that their principal would be returned within a specific period of time. The complaint alleges that Anthony issued an offering circular to the customers describing the newly created company as a corporation that "specializes in the design, development and marketing of investment banking projects," and stated that the offering proceeds would be used for the design and development of the company's "convertible preferred stock offering." The complaint also alleges that the company immediately defaulted on its obligations, never engaged in any business operations and never conducted any preferred stock offering. Instead, Anthony transferred over half of the proceeds to his financially troubled broker-dealer firm and used much of the remaining offering proceeds for his own use and benefit. (NASD Case #E0720031136-02).

Robert Eugene Elkins (CRD #2618105, Registered Representative, Redford, Michigan) was named as a respondent in an NASD complaint alleging that he effected transactions in the account of a public customer without the knowledge or consent of the customer, and in the absence of written or oral authorization for Elkins to exercise discretion in the customer's account. (NASD Case #E8A2003080701)

Philip Benjamin Melnick (CRD #2930299, Registered Representative, Staten Island, New York) was named in an NASD complaint alleging that, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, he employed a device, scheme or artifice to defraud; or made an untrue statement of material fact or omitted a material fact in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in an act, practice or course of business that operated or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security. (NASD Case #20042000038-01)

Elliot Nadel (CRD #812711, Registered Principal, Whitestone, New York) was named as a respondent in NASD complaint alleging that he transferred \$46,760.08 from a public customer's account to an account he managed and controlled without the customer's knowledge, authorization or consent. The complaint also alleges that Nadel failed to respond to NASD requests for information. (NASD Case #ELI2004039602)

Russell Palermo (CRD #4392276, Registered Representative, Huntley, Illinois) was named as a respondent in an NASD complaint alleging that instead of using funds he received from public customers for investment purposes, he used them for his own personal benefit without their knowledge or consent. The complaint also alleges that he failed to timely respond to NASD requests for information. (NASD Case #2005000118401)

Emanuele Anthony Scarso (CRD #2080536, Registered Representative, Brooklyn, New York) was named as a respondent in a NASD complaint alleging that he effected securities transactions in the account of public customers without their knowledge or consent, and in the absence of written or oral authorization for Scarso to exercise discretion. (NASD Case #E062003035102)

William Anthony Shriner (CRD #3212618, Registered Representative, Brownsburg, Indiana) was named as a respondent in an NASD complaint alleging that he converted funds from a public customer's securities account, without the consent or knowledge of the customer for his own use and benefit. The complaint also alleged that he failed to respond to NASD requests for information. (NASD Case #E8A2004073701)

Firms Suspended Pursuant to NASD Rule 9553 for Failure to Pay Arbitration Fees

Sort Securities, LLC
New York, New York
(October 19, 2005)

Individuals Revoked for Failing to Pay Fines and/or Costs in Accordance with NASD Rule 8320

Mark Joseph Deves
St. Louis, Missouri
(October 19, 2005)

Anthony Rahama Whitter
Mt. Vernon, New York
(October 19, 2005)

Individual Barred Pursuant to NASD Rule 9552(h)

Matthew D Reitz
Lodi, California
(September 21, 2005)

Individuals Suspended Pursuant to NASD Rule 9552(d)

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Kimberly Gallops Anthony
Vestavia Hills, Alabama
(September 20, 2005)

Sandeep Bardia
Maspeth, New York
(September 12, 2005)

Samuel G. Cohen
Brooklyn, New York
(September 16, 2005)

Justin Andre Inniss
Brooklyn, New York
(October 4, 2005)

Roger Glen Wilson
Irving, Texas
(September 13, 2005)

Samuel Lackland Talbot
North Jacksonville, Florida
(October 5, 2005)

Firms Suspended Pursuant to NASD Rule Series 9554 for Failure to Comply With an Arbitration Award or a Settlement Agreement

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Tiche Capital Strategies, L.L.C.
Pittsburgh, Pennsylvania
(June 20, 2005 to October 12, 2005)

Individuals Suspended Pursuant to NASD Rule Series 9554 for Failure to Comply With an Arbitration Award or a Settlement Agreement

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

John Vincent Ballard
Germantown, Tennessee
(September 26, 2005)

Richard Samuel Bonesteel
Sylvania, Ohio
(September 28, 2005)

Burnis Torrell Brown
Chicago, Illinois
(October 24, 2005)

John Right Crawford
Oak Island, North Carolina
(October 3, 2005)

William Stephen Foster
Norman, Oklahoma
(September 22, 2005)

Sunny Michael Ikwue
Queens Village, New York
(July 18, 2005 to October 20, 2005)

William Joseph Julian
Huntington, New York
(October 17, 2005)

Brian Anthony Kath
Henderson, Nevada
(October 24, 2005)

Bruce Willie Korus
Olympia, Washington
(October 24, 2005)

Jason Alexander Lawson
Flushing, New York
(October 18, 2005)

Van Hung Le
Arlington, Virginia
(October 24, 2005)

Craig Leszczak
Hewlett, New York
(October 13, 2005)

Michael Mourounas
Brooklyn, New York
(September 28, 2005)

Robert Gary Nelson
Brooklyn, New York
(September 28, 2005)

David Scott O'Block
Knoxville, Tennessee
(October 3, 2005 to October 5, 2005)

Michael Park
College Point, New York
(September 27, 2005)

Edward Francis Pellegrini
Richardson, Texas
(September 27, 2005)

Victor Michael Rodriguez
Levittown, New York
(September 28, 2005)

Robert Erwin Tschan II
Henderson, Nevada
(October 24, 2005)

Scott Howard Weissman
Miami, Florida
(September 27, 2005)

Errol Vaughn Wilson
Brooklyn, New York
(September 28, 2005)

NASD Fines Three Firms \$6.75 Million, Expels a Fourth Firm for Corporate High Yield Bond Trade Violations

Firms Also Ordered to Pay Customers Restitution Exceeding \$1.1 Million

NASD has fined three firms—and expelled a fourth—for violations relating to trading in corporate high yield bonds. All four firms were cited for charging excessive markups or markdowns in bond trades, as well as for supervision violations. The four firms will also pay restitution to customers totaling more than \$1.1 million.

SG Americas Securities, LLC, of New York, will pay a \$3.75 million fine and more than \$728,000 in restitution. New York's RBC Capital Markets Corporation was fined \$2 million and ordered to pay more than \$108,000 in restitution. Its affiliate, RBC Dain Rauscher, Inc., of Minneapolis, was fined \$1 million and will make more than \$158,000 in restitution payments. DebtTraders, Inc., of New York, was expelled from the industry and ordered to pay nearly \$120,000 in restitution. DebtTraders ceased doing business on July 31.

In addition, SG Americas Securities, RBC Capital Markets and RBC Dain Rauscher were ordered to revise their written supervisory procedures for high yield bond sales and purchases within 60 days.

NASD rules require that firms sell all securities, including corporate high yield debt, at fair prices. According to NASD markup policy, markups and markdowns generally should not exceed five percent and, for most debt transactions, that figure should be lower. Numerous SEC and court rulings have upheld those principles.

NASD found that from 2002 through 2003, SG Cowen Securities Corporation's high yield bond desk, which is now part of SG Americas, charged markups and markdowns ranging from 6.7 percent to as much as 40 percent on 13 pairs of trades. During 2003, RBC Capital Markets charged markups that ranged from 5.3 percent to 14.3 percent on five pairs of trades. During 2004, RBC Dain Rauscher charged markups ranging from 5.5 percent to 8 percent on six pairs of trades. In 2003 and 2004, DebtTraders charged markups and markdowns that ranged from 5.3 percent to 25 percent on 12 pairs of trades.

NASD's findings also include books and records violations by three of the firms—SG Americas, RBC Dain Rauscher and DebtTraders—and the failure by DebtTraders to correctly report bond transaction information to NASD's Trade Reporting and Compliance Engine (TRACE). Since July 2002, firms have been required to report price and volume data on

all corporate bond transactions to TRACE, initially within 75 minutes, today within 15 minutes. NASD publicly disseminates that transaction data immediately, on virtually 100 percent of over-the-counter activity—approximately 22,000 transactions every day, representing approximately \$18 billion in volume every day. TRACE's transaction information is available free of charge at www.nasdbondinfo.com and at www.investinginbonds.com.

"TRACE data not only brings much-needed transparency to the corporate bond market for investors and dealers alike, it enhances NASD's surveillance of the over-the-counter bond market, giving regulators the ability to identify transactions where customers have been charged excessive markups and markdowns," said Stephen Luparello, NASD's Executive Vice President for Market Regulation. "The nearly \$7.9 million in fines and restitution ordered in these cases illustrates the value of TRACE, both to effective regulatory enforcement and to investor protection."

NASD also found that supervision at all four firms was deficient. Although the firms had written supervisory procedures in place, in each case the supervisory systems were not adequate—they were not designed so that the firms could comply with the legal requirements and guidelines set forth in NASD's markup policy. Additionally, NASD found that DebtTrader's written supervisory procedures regarding books and records were also deficient.

In concluding these settlements, the firms neither admitted nor denied the charges, but consented to the entry of NASD's findings.

NASD Fines Ameriprise Financial Services, Inc. \$500,000 for Supervisory Violations in 529 College Savings Plan Sales

The Former American Express Financial Advisors Also Ordered to Pay Approximately \$750,000 to Compensate Customers

NASD has ordered Ameriprise Financial Services, Inc. of Minneapolis—formerly American Express Financial Advisors—to pay a fine of \$500,000 for failing to adequately supervise the firm's sales of 529 plans. NASD also ordered the firm to pay approximately \$750,000 to compensate more than 500 customer accounts disadvantaged by those supervisory failures. The conduct at issue occurred when the firm was known as American Express Financial Advisors.

This enforcement action is the first to result from NASD's recent fact-finding sweep examining sales of the popular college savings plans.

529 college savings plans are tax-advantaged investment programs designed to help parents and others pay for qualified higher education costs. The plans offer families the opportunity to obtain growth and distribution of earnings that are free from federal taxes. Each of the 50 states and the District of Columbia currently offers at least one 529 plan—more than 80 plans are available in all. Federal tax advantages apply to all 529 college savings plans, while 26 states and the District of Columbia currently offer varying tax incentives as well—meaning that state tax treatment can be an important consideration for investors in deciding which plan to select. 529 plans are subject to regulation by the Municipal Securities Rulemaking Board, whose rules are enforced by NASD.

“529 college savings plans play an increasingly important role in enabling families to save for college. NASD has long been concerned that investors understand the differences between the many different 529 plans that are being offered today and choose a plan that is right for them,” said NASD Vice Chairman Mary L. Schapiro. “These are complex investments, and individual investors need to consider a number of factors when choosing a 529 Plan—including its performance, investment choices, fees and expenses and its tax implications.”

NASD’s investigation showed that from May 2001 through the end of 2004, Ameriprise sold over \$1.1 billion of 529 plans to more than 138,000 customer accounts, at a time when the firm’s supervision of 529 sales was inadequate. NASD found that the firm’s procedures during this period were not reasonably designed to achieve compliance with suitability obligations in the sale of 529 plans. In fact, from May 2001 until October 2003, when the firm sold over \$625 million of 529 plans, most of the firm’s procedures for sale of 529 plans were simply general compliance requirements relating to the sale of all products offered by Ameriprise. Although Ameriprise did adopt certain procedures in October 2003 relating specifically to the sale of 529 plans, NASD found that those procedures were not adequate to address the firm’s suitability obligations.

During the period May 2001 through October 2003, approximately half of the states offered state tax benefits to residents who purchased an in-state plan. During the same period, however, NASD found that Ameriprise offered and sold only one 529 plan—a plan sponsored by the state of Wisconsin. Approximately 32 percent of its sales—over \$200 million—were to customers who lived in one of the tax-advantaged 529 plan jurisdictions. Investors in five of those states (New Mexico, South Carolina, Illinois, Colorado and West Virginia) could have received unlimited state income tax deductions for investments in their home state’s 529 plans. Yet, through the end of 2004, Ameriprise sold over \$55 million in the Wisconsin 529 plan to customers residing in

those five states. As a result, those Ameriprise customers purchasing the Wisconsin plan who lived in one of the tax-advantaged states did not receive state income tax benefits available to purchasers of 529 plans.

These 529 plan sales occurred at a time when Ameriprise did not have adequate procedures in place to take state income tax benefits into account when determining the suitability of 529 sales. Among other things, Ameriprise did not have procedures requiring that registered representatives consider the state income tax benefit that might be obtained by purchasing an in-state plan and weigh that benefit against other benefits that might be provided by a recommended out-of-state plan, such as investment performance, investment choices, fees and expenses, or other factors. Even when the firm revised its 529 procedures, as it did in October of 2003, they contained no procedures or guidance to assist their brokers in making a suitability determination.

In addition to fining Ameriprise \$500,000, NASD ordered the firm to pay approximately \$750,000 to compensate more than 500 accounts where customers purchased a 529 plan sponsored by a state other than the customer’s state of residence and experienced substantial lost tax benefits.

In settling with NASD, Ameriprise neither admitted nor denied the allegations, but consented to the entry of NASD’s findings.

Green Street Advisors Fined \$150,000 for Issuing Research Reports Prepared by Unregistered Research Analysts

Analysts Issued Over 120 Reports Before Taking and Passing the Qualifying Exams

NASD has fined Green Street Advisors, a Los Angeles-based broker-dealer, \$150,000 for failing to register its eight research analysts under NASD rules that took effect last year. The rules established a special examination series and registration classification for analysts and followed a series of enforcement actions relating to conflicts of interest involving research analysts.

“NASD’s analyst registration requirements are designed to protect investors by ensuring that research analysts are properly qualified and fully understand their regulatory obligations,” said Barry Goldsmith, NASD Executive Vice President and Head of Enforcement. “It is particularly disturbing that this firm was aware of the problem, failed to observe the new rules’ deadlines, and yet continued to issue reports without properly registering their analysts.”

As of March 30, 2004, NASD rules require research analysts to be registered with NASD after passing new research analyst examinations. In an effort to avoid business disruptions, persons who were already functioning as research analysts were granted a one-year grace period for meeting the new registration requirements—provided their firm applied for the new research analyst registration by May 31, 2004, 60 days following the effective date of the new requirement.

NASD found that Green Street failed to apply for the research analyst designation for its analysts by the May 31 deadline. Consequently, the one-year grace period for passing the research analyst qualification examinations was not available to Green Street's analysts. On or about June 18, 2004, after Green Street discovered that it had failed to apply for new registration for its eight analysts, the firm sought an extension from NASD of the filing deadline. That request was denied.

Nevertheless, during the period from June 1, 2004 to November 5, 2004—the date by which all of Green Street's analysts were properly qualified and registered—Green Street's analysts continued to prepare and publish research reports. NASD found that Green Street issued 123 reports and/or updates of the reports, 104 of which were issued after the firm received notice that NASD had denied its request for a filing deadline extension.

In May, in its first enforcement action arising from the new analyst registration rules, NASD sanctioned SunTrust Capital Markets, Inc. \$100,000 for similar rule violations.

In settling this matter, Green Street neither admitted nor denied the charges, but consented to the entry of NASD's findings.

NASD Fines Instinet and INET ATS \$1,475,000 for Inaccurate Execution Quality Reports, Inadequate Supervision and Other Violations

NASD has ordered Instinet, LLC and INET ATS, Inc. (formerly known as The Island ECN, Inc.) to pay \$1.475 million for rule violations relating to publication of inaccurate reports on order execution quality, backing away from the firm's posted quotes, failure to report orders, improper "last sale" or trade reporting, supervision and other areas. Although the firms used automated systems to generate their reports on execution quality, they failed to reasonably supervise the accuracy of the data generated and reported.

The execution reports, published monthly, provide data that must be made public under Securities and Exchange Commission (SEC) rules. INET's and Instinet's flawed reports

compromised the ability of the investing public and other market participants to accurately assess execution quality and compare venues for execution. The inaccurate reports published by the firms involved as much as 30 percent of Nasdaq executions.

Of the \$1.475 million in sanctions imposed on Instinet and INET, \$700,000 is for publication of inaccurate reports on order execution quality in violation of SEC Rule 11Ac1-5 and related supervisory violations, and \$775,000 is for wide-ranging market violations, including failure to honor posted quotes and inaccurately reporting millions of orders and trades.

NASD found that from the time SEC Rule 11Ac1-5 took effect in June 2001 through August 2004, Instinet and Island (later INET), published execution reports that contained numerous errors. These errors included the misclassification of shares, miscounting of cancelled shares, improper exclusion of orders, improper calculations based on erroneous times, improper categorizing of orders, inaccurate order execution information, incorrect calculation of spreads and other incorrect calculations. The effect of the erroneous reports varied. In certain instances, the reporting errors resulted in execution quality statistics being reported in a worse light than was actually the case.

NASD's investigation showed that these errors resulted from the entities' heavy reliance on automated systems to comply with the publication requirements of SEC Rule 11Ac1-5 without adequately testing those systems, their failure to adequately respond to the repeated findings of errors in the published reports, and their failure to implement adequate supervisory systems.

"A firm's duty to supervise automated systems is every bit as important as its duty to supervise employees," said NASD Vice Chairman Mary L. Schapiro. "When critical tasks are automated, firms must verify that the automation functions as intended. These firms' failure to meet that responsibility seriously compromised market participants' access to reliable information crucial for making informed trading decisions."

NASD found that supervision at Instinet, Island and INET was deficient. For years, the firms failed to designate a registered principal to supervise for compliance with SEC Rule 11Ac1-5, and the firms failed to allocate sufficient resources to supervision. Despite notification by NASD and others of errors in the firms' published reports, the firms did not undertake supervisory reviews.

NASD also found that Instinet submitted over 193 million inaccurate reports to the Order Audit Trail System ("OATS") from April 2002 through September 2002. Additionally, Instinet failed to report millions of orders to NASD's

Alternative Display Facility (ADF) and also inaccurately reported millions of transactions to ADF. NASD found that INET engaged in OATS, ACT reporting, trade reporting and trading halt violations. The reporting violations adversely impacted NASD's ability to conduct effective market surveillance, since regulators rely on the integrity of the information. Both INET and Instinet failed to implement effective supervisory systems and written supervisory procedures designed to detect and prevent these violations.

As part of the settlement, INET and Instinet agreed to obtain an independent regulatory auditor to conduct a comprehensive audit of their compliance with SEC Rule 11Ac1-5 during 2006. INET and Instinet were also ordered to revise their written supervisory procedures within 45 days.

In settling this matter, the firms neither admitted nor denied the charges, but consented to the entry of NASD's findings.

Separately, the SEC settled with Instinet and INET for \$700,000 for the violations of SEC Rule 11Ac1-5 as part of a parallel investigation.